



BILLING CODE: 4510-7C

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**29 CFR Part 20**

**RIN 1290-AA27**

**Administrative Wage Garnishment Procedures**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Final rule.

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**SUMMARY:** This rule will allow the U.S. Department of Labor (Department) to garnish the disposable wages of non-federal workers who are indebted to the Department without first obtaining a court order. It implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA) in accordance with the regulations issued by the Secretary of the Treasury.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Shelia Alexander, Office of the Chief Financial Officer, (202) 693-4472; or Rachel Rikleen, Office of the Solicitor, (202) 693-5702.

**SUPPLEMENTARY INFORMATION:**

## **I. Debt Collection Improvement Act Requirements and Background**

Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), which is codified at 31 U.S.C. 3720D, authorizes federal agencies to use administrative procedure to garnish the disposable pay of an individual to collect delinquent non-tax debt owed to the United States in accordance with regulations promulgated by the Secretary of the Treasury. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor pursuant to a withholding order. Under the DCIA, agencies may garnish up to 15% of a delinquent non-tax debtor's disposable wages. Prior to the enactment of the DCIA, agencies were generally required to obtain a court judgment before garnishing the wages of non-Federal employees.

The DCIA requires the Secretary of the Treasury to issue regulations implementing the administrative wage garnishment requirements. These implementing regulations, which are at 31 CFR 285.11, provide for due process for nontax debtors and require agencies to publish regulations for administrative wage garnishment hearings. Pursuant to 31 CFR 285.11(f), federal agencies must either prescribe regulations for the conduct of an administrative wage garnishment hearing consistent with the procedures set forth in section 285.11 or adopt section 285.11 without change by reference. Through this rule, the Department has decided to issue its own regulations consistent with the procedural requirements of section 285.11.

This final rule governs only administrative wage garnishment. Nothing in this regulation precludes the use of collection remedies not contained in the regulation. The

Department and other federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

The Department may, but is not required to, promulgate additional policies, procedures, and understandings consistent with this regulation and other applicable Federal laws, policies, and procedures, subject to the approval of the Department's Chief Financial Officer or their delegate. The Department does not intend for its components, agencies, and entities to be able to adopt different policies, procedures, or understandings.

## **II. Discussion of Comments**

In response to its Interim Final Rule (IFR) concerning Administrative Wage Garnishment (80 FR 60797 October 8, 2015), the Department received five comments from private citizens and an industry association. The comments focused primarily on three subject areas: the justification for the regulation, due process concerns, and the burden of proof requirements.

Two commenters asked why the regulation is necessary, arguing that the Department must explain why the current debt collection tool are insufficient. The Department has determined that it is legally obligated to prescribe regulations for the conduct of administrative wage garnishment. On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f) of 31 CFR 285.11 provides that “[a]gencies shall prescribe regulations for the conduct of administrative wage garnishment hearings consistent with this section or shall adopt this section without change by reference.” This regulatory obligation is what necessitates this

final rule. No changes were made to the final rule in response to the comments received regarding the regulation's justification.

The Department received four comments raising concerns related to due process. In general, these comments argued that garnishing wages through an administrative process, instead of through the courts, would remove protections for debtors and may cause unnecessary hardships to impoverished individuals. The Department has determined the regulation protects due process rights that must be afforded to a debtor when an agency seeks to collect a debt, including the ability to verify, challenge, and compromise claims, and provide access to administrative appeals procedures. Under section 20.205, debtors must be notified of the potential of a wage garnishment. Under section 20.206, a hearing must be held prior to the issuance of a withholding order if the debtor submits a timely request. The Department will provide the debtor with an opportunity to inspect and copy records related to the debt, and to establish a repayment agreement under section 20.205. All of these requirements protect the due process rights of the debtors, and, as a result, no changes have been made to the final rule in response to comments received.

As for concerns about imposing untenable burdens on debtors, the proposed rule included multiple provisions to protect against this outcome. For example, under section 20.210, the Department may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been re-employed continuously for at least 12 months. Additionally, section 20.209 sets out clear limits on the amounts the Department may seek to garnish, and section 20.211 allows the debtor to request adjustments to the garnishment based on new financial hardships. The

Department has determined that these protections are sufficient to ensure that no undue burden is put on impoverished debtors.

One commenter indicated the rule should be modified to require “an oral, in-person, face-to-face meeting.” Currently, under section 20.20.206, a hearing may be conducted in writing, by telephone or other communications technology, or in person. The commenter was concerned that anything other than a face to face meeting would fail to demonstrate the individuals’ situation and would harm the process. Under 31 CFR 285.11(f)(3)(ii), “[a]ll travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.” The Department has determined requiring debtors to appear in-person would constitute an unconscionable financial burden on debtors and serve as an unreasonable obstacle to appropriate disputes. The Department notes that in-person hearings are not required to ensure that due process is served. As a result, no changes have been made to the final rule in response to comments received.

Finally, one commenter raised a concern about the burden of proof requirements found in section 20.206(f). The commenter contends that the section does not describe requirements for what documentation the Department must produce to “establish the existence of the debt and the amount of the debt” and that more information would be necessary for a court-ordered garnishment. Under section 20.206(f), the Department will have the initial burden of proving, by a preponderance of the evidence, the existence or amount of the debt by submitting a certified copy of the adjudication or other document. By requiring this documentation, the Department has set a standard for the kind of document that will be acceptable to meet its burden of proof. This documentation requirement is equivalent to the proof that would be needed in some courts for a

garnishment order. Additionally, this rule parallels existing regulations of other agencies, including the Department of the Treasury, those promulgated by other Federal agencies, and the Federal Claims Collection Standards (FCCS), as required by the Debt Collection Improvement Act of 1996.

### **III. Summary of Key Aspects of the Rule**

This rule allows the Department to initiate proceedings administratively to garnish the wages of a delinquent debtor. It applies to debts owed to the Department or in connection with any program administered by the Department. The administrative wage garnishment process will be applied consistently throughout the Department.

The Department can enter into agreements, such as memoranda of understanding, with other Federal agencies permitting that agency to administer part or all of the Department's administrative wage garnishment process. Nothing in this regulation requires the Department to duplicate notices or administrative proceedings required by contract, this regulation, or other laws or regulations. Thus, for example, the Department is not required to provide a debtor with two hearings on the same issue merely because two different collection tools are used, each of which requires that the debtor be provided with a hearing.

Section 20.205 lists the notice requirements, which includes an explanation of the debtor's rights. The debtor is allowed to inspect Department records related to the debt, enter into a written repayment agreement, and have a hearing.

Under section 20.206, a debtor can request one of two types of available hearings--a paper hearing or an oral hearing. The format of oral hearings is not limited to in-

person and telephone hearings, it may include new forms of technology. The hearing official has the authority to determine the kind of hearing and the amount of time allotted each hearing.

If a hearing is held, the Department can meet its initial burden by offering documentation, including a copy of the debt adjudication, which demonstrates the existence of the debt and its amount as is required under section 20.206(f). Once the Department has established its prima facie case, the debtor can dispute the existence or amount of the debt. For example, debtors can meet their burden by demonstrating that they are not the person who owes a debt to the Department, that they have not received payments from the Department or have not been fined by the Department, or that they have already paid the debt.

Additionally, the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101-8193, contains a provision that precludes administrative and judicial review of agency determinations, which normally includes a repayment schedule. As a result, for hearings related to FECA debts, once the Department has made its prima facie case, the debtor has only two limited grounds on which he or she can demonstrate that an administrative wage garnishment is not appropriate. The debtor may not challenge the underlying merits of the determination that created the debt.

Section 20.207 outlines the timing and elements of the withholding order to the debtor's employer. Pursuant to section 20.208, employers must complete and return a certification noting, in addition to other information, that they have received the withholding order and verifying the debtor's employment.

Section 20.209 describes how much the Department can withhold through administrative wage garnishment, which is up to 15% of the debtor's disposable pay, and the employer's administrative wage garnishment duties. A withholding order for family support would always have priority over an administrative wage garnishment order. If there are multiple federal garnishment orders, priority depends on which garnishment order was first obtained. When a debtor's disposable pay is already subject to one or more withholding orders with higher or equal priority with the Department's administrative wage garnishment order, the amount that the employer must withhold and remit to the Department would not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of the debtor's disposable pay. For example, if the employer is withholding 20% of a debtor's disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 5% of the debtor's disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to 15%.

Finally, sections 20.210 and 20.211 provide protections to employees that are facing financial hardships. Section 20.210 prohibits the Department from garnishing the wages of a debtor who was involuntarily separated from employment. The debtor has the obligation under this section to inform the Department of the involuntary separation. Section 20.211 outlines how a debtor can request a review of their garnishment due to materially changed circumstances that have created a financial hardship.

#### **IV. Compliance With Statutory and Regulatory Requirements for Rulemakings**

The Administrative Procedure Act. The Department has determined this rule involves an agency procedure or practice, and therefore no notice of proposed rulemaking is required under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(A) and (B).

This rule parallels the existing operational regulations of other agencies to effectuate the collection of non-tariff and nontax debts to implement 31 U.S.C. 3711. Because this rule parallels existing, long-standing rules that have already been subject to APA notice and comment procedures, we believe that publishing this rule with the usual notice and comment procedures is unnecessary. Accordingly, the Department has determined that prior notice and public comment procedures would be unnecessary pursuant to 5 U.S.C. 553(b)(B).

The Paperwork Reduction Act. The Department has determined that the provisions of the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501, et seq., do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2). In the IFR, the Department specifically invited comments about this determination, but none were received.

The Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), Public Law 96-354, as amended (5 U.S.C. 601 et seq.), requires administrative agencies to consider the effect of their actions on small entities, including small businesses. As a procedural rule, the requirements of the RFA pertaining to regulatory flexibility analysis

do not apply. However, even if the RFA were to apply, the Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in RFA. Although small entities will be subject to this regulation and to the certification requirement in this rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule.

Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined by Title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Orders 12866, 12988, and 13132. This rule is not a significant regulatory action as defined in Executive Order 12866. The rule has been reviewed in accordance with Executive Order 12988. This rule preempts state laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this

rule or action taken under this rule, all administrative remedies must be exhausted. This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with E.O. 13132, it is determined this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 29 CFR Part 20**

Administrative wage garnishment, Debt collection, Labor.

Signed at Washington, DC, on this 17<sup>th</sup> day of October, 2016

Thomas E. Perez

U.S. Secretary of Labor.

## **PART 20—FEDERAL CLAIMS COLLECTION**

Accordingly, the interim rule amending 29 CFR part 20 which was published at 80 FR 60797 on October 8, 2015, is adopted as a final rule without change.

[FR Doc. 2016-26093 Filed: 10/27/2016 8:45 am; Publication Date: 10/28/2016]